STATE OF MICHIGAN

COURT OF APPEALS

JOHN LAURAIN,

Plaintiff-Appellant,

v

EDWARD W. SPARROW HOSPITAL ASSOCIATION and DENT ENTERPRISES, INC., d/b/a BENJAMIN PARKING LOT MAINTENANCE COMPANY,

Defendants-Appellees.

UNPUBLISHED
October 22, 2002

No. 233429
Ingham Circuit Court
LC No. 00-091630-NI

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendants. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On March 9, 1998, snow and rain fell during the evening. Defendant Benjamin cleared and salted the parking lots and walkways at defendant Sparrow's facility. The next morning plaintiff, who is a physician, arrived and found the final ten to fifteen feet of the walkway to the physician's entrance to the building covered with ice and snow. He attempted to enter the building through the physician's entrance but slipped and fell to the ground, sustaining injuries.

Plaintiff filed suit alleging that defendants breached their duty to maintain the sidewalk in a safe manner and to warn of any hazards. Sparrow moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that it had no duty to warn plaintiff because the danger was open and obvious. Defendant Dent concurred with the motion. The trial court granted summary disposition in favor of defendants. The court found that reasonable minds could not disagree that the snow and ice was an open and obvious hazard, and that the undisputed evidence showed that plaintiff recognized the hazard and chose to attempt to traverse the walkway to the physician's entrance, notwithstanding the fact that he was aware that other entrances were available.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp,* 225 Mich App 601, 605; 572 NW2d 679 (1997).

To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000).

A possessor of land has a duty to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition on the land. A possessor of land may be liable for injuries resulting from negligent maintenance of the land. The duty to protect an invitee does not extend to a condition from which an unreasonable risk of harm cannot be anticipated, or from a condition that is so open and obvious that an invitee could be expected to discover it for himself. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609, 611; 537 NW2d 185 (1995).

The open and obvious danger doctrine attacks the duty element that a plaintiff must establish in a prima facie negligence case. *Id*. at 612. Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993). However, if special aspects of a condition make even an open and obvious risk unreasonably dangerous, a possessor of land must take reasonable precautions to protect invitees from that risk. If such special aspects are lacking, the open and obvious condition is not unreasonably dangerous. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 517-519; 629 NW2d 384 (2001).

Plaintiff argues that the trial court erred by granting summary disposition in favor of defendants. He maintains that the open and obvious danger doctrine does not bar an action for injuries caused by the failure to remove snow and ice, citing *Quinlivan v Great Atlantic & Pacific Tea Co, Inc*, 395 Mich 244, 261; 235 NW2d 732 (1975). We disagree and affirm. Plaintiff's reliance on *Quinlivan*, *supra*, for the proposition that the open and obvious danger doctrine does not apply in cases involving an accumulation of snow and ice is misplaced. That case rejected the proposition that ice and snow are obvious hazards in all circumstances and cannot give rise to liability, but did not hold that the open and obvious danger doctrine is always inapplicable in cases involving snow and ice. *Id*. The *Quinlivan* analysis is now more properly seen as part of the issue of whether there are special aspects of the condition that make it unreasonably dangerous in spite of its open and obvious condition. *Corey v Davenport College of Business (On Remand)*, 251 Mich App 1, 6-9; 649 NW2d 392.

In the instant case, it was undisputed that the snow and ice on the walkway was open and obvious, and that plaintiff observed the condition before he attempted to traverse the walkway. Furthermore, plaintiff acknowledged that he attempted to use the walkway to the physician's entrance notwithstanding the fact that he knew that other entrances to the building were available. Plaintiff failed to demonstrate the existence of any special aspects that made the condition unreasonably dangerous in spite of its open and obvious condition. *Lugo*, *supra*; see also *Joyce v Rubin*, 249 Mich App 231, 240-242; 642 NW2d 360 (2002). Summary disposition was proper. *Corey*, *supra*.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra